

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2006-79-T - ORDER NO. 2006-608  
OCTOBER 16, 2006

IN RE: Application of Mark Toppi d/b/a American	)	ORDER GRANTING
Family Moving & Storage, 8577 Kennestone	)	CLASS E CERTIFICATE
Lane, North Charleston, South Carolina	)	
29420 for a Class E (HHG) Certificate of	)	
Public Convenience and Necessity for	)	
Operation of Motor Vehicle Carrier.	)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Application of Mark Toppi d/b/a American Family Moving & Storage ("Applicant"), 8577 Kennestone Lane, North Charleston, South Carolina 29420 for a Class E (HHG) Certificate of Public Convenience and Necessity for Operation of Motor Vehicle Carrier to transport household goods, as defined by S.C. Code Ann. Regs. 103-210(1), between points and places in Charleston, Berkeley, and Dorchester Counties, South Carolina.

The Commission's Docketing Department instructed the Company to publish a Notice of Filing in newspapers of general circulation in the service area desired. The Notice of Filing was published as instructed, and it instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Protests or Petitions to Intervene were received.

**APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20 (Supp. 2005) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2005) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2005) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity.

The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June, 1998.

6. 26 S.C. Code Ann. Regs. 103-102(l) (Supp. 2005) defines "Certificate of PC&N" as the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Code Ann. Regs. 103-102(14) (Supp. 2005) defines "Common Carrier by Motor Vehicle" as "any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Code Ann. Regs. 103-114 (Supp. 2005) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

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<sup>1</sup> 26 S.C. Code Ann. Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Ann. Regs. 103-133 (Supp. 2005) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The

applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission insurance requirements and the costs associated therewith.

- c. WILLING. Having met the requirements as to “fit and able,” the submitting of the application for operating authority would be sufficient demonstration of the applicant’s willingness to provide the authority sought.

10. 26 S.C. Code Ann. Regs. 103-134 (Supp. 2005) is entitled “When Hearing May Be Held” and provides in relevant part that “[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

#### **EVIDENCE OF RECORD**

The hearing on the Application was held on August 16, 2006, at 2:30 p.m. in the offices of the Commission. The Honorable G. O’Neal Hamilton, Chairman, presided. K. Chad Burgess, Esquire, appeared on behalf of the Applicant. The Office of Regulatory Staff (ORS) was represented by C. Lessie Hammonds, Esquire.

At the hearing, the parties presented to the Commission a Settlement Agreement, which summarized the evidence and recited the facts supporting the granting of the certificate requested by the Applicant. The Settlement Agreement is attached hereto as Order Exhibit 1. The Applicant himself testified as to each of the facts outlined in the Settlement Agreement, and he was made available to the Commission for questions. The testimony of record demonstrated that the Applicant intends to operate as a Motor

Vehicle Carrier of Household Goods between points and places in Charleston, Berkeley, and Dorchester Counties; that the Applicant plans to lease sufficient vehicles to provide household goods moving services; that the Applicant has agreed to provide services meeting the service standards established by the Commission; that the Applicant has received satisfactory safety ratings; that the Applicant is subject to no outstanding judgments; and that the Applicant is familiar with applicable statutes and regulations. The ORS stipulated to all of the Applicant's testimony and other supporting evidence as a term and condition of settlement.

#### **FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, the applicable law, and the Settlement Agreement entered into by the Parties, the Commission makes the following findings of fact:

1. The Applicant, Mark Toppi d/b/a American Family Moving & Storage, desires to provide moving services of household goods between points and places in Charleston, Berkeley, and Dorchester Counties, South Carolina.
2. The Applicant is fit, willing, and able to provide and properly perform the services which it seeks to provide. "Fitness" has been demonstrated since the record contains (1) a certification that Mr. Toppi is familiar with the regulations and statutes governing for-hire motor carrier services and (2) evidence that there are no outstanding judgments pending against Mr. Toppi or his Company. "Able" was demonstrated by the evidence of record which reveals that the Company has the present ability to and has arranged for the necessary truck and equipment with which to perform moving services, and has similarly arranged for insurance which meets the minimum requirements set by

this Commission. The evidence of record also indicates that the applicant possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. “Willingness” was demonstrated by the filing of the Application and the testimony of the witnesses indicating the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by the Applicant are required by the public convenience and necessity. We find that the witness presented on behalf of the Company establishes that the public convenience and necessity warrant the issuance of the permit requested by the Applicant. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

4. The Settlement Agreement should be approved.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Mark Toppi d/b/a American Family Moving & Storage has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Ann. Regs. 103-133 (Supp.2005).

2. The Commission concludes that the Company has sufficiently demonstrated that the public convenience and necessity requires its proposed services as reflected in its Application.

3. Based on the conclusions above, that the Company has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the

public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Mark Toppi d/b/a American Family Moving & Storage should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in S. C. Code Ann. Regs. 103-210(1):

Between points and places in Charleston, Berkeley, and  
Dorchester Counties, South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

4. The Settlement Agreement is approved.

IT IS THEREFORE ORDERED:

1. That the Application of Mark Toppi d/b/a American Family Moving & Storage for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved.

2. The Company shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Code Ann. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs.



Vol. 26 (1976), as amended, a Certificate shall be issued by the Office of Regulatory Staff authorizing the motor carrier services granted herein.

4 Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Office of Regulatory Staff requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

6. The Settlement Agreement is approved.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



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G. O'Neal Hamilton, Chairman

ATTEST:



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C. Robert Moseley, Vice Chairman

(SEAL)

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2006-79-T**  
**August 9, 2006**

IN RE:

Application of Mark Toppi d/b/a )  
American Family Moving & Storage )  
For a Class E (HHG) Certificate of )  
Public Convenience and Necessity )  
For Operation of Motor Vehicle Carrier )  
)

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement") is made by and among the Office of Regulatory Staff ("ORS") and Mark Toppi d/b/a American Family Moving & Storage ("American Family" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party");

WHEREAS, on March 14, 2006, American Family filed its application requesting a Class E Certificate of Public Convenience and Necessity to transport household goods commodities as defined in 26 Code Regs. 103-210(1) between points and places in Charleston, Berkeley, and Dorchester Counties in accordance with the provisions of S.C. Code Ann. § 58-23-10, et seq. ("Application");

WHEREAS, on March 22, 2006, the Public Service Commission of South Carolina ("Commission") issued a transmittal letter requiring American Family to publish a Notice of Filing, one day, in newspapers of general circulation in the State in the desired service area no later than April 3, 2006, and to provide an Original Publisher's Affidavit to the Commission no later than April 21, 2006;

WHEREAS, on April 17, 2006, American Family filed an Original Publisher's Affidavit with the Commission demonstrating the Notice of Filing was published on March 28, 2006, in The Post and Courier, a daily newspaper of general circulation published in Charleston, South Carolina;

WHEREAS, on May 3, 2006, the Commission issued a Notice of Hearing in the above captioned matter scheduled to be heard before the Commission on August 16, 2006;

WHEREAS, on April 5, 2006, American Family filed with the Commission a Safety Compliance Review conducted by the South Carolina State Transport Police;

WHEREAS, the purpose of this proceeding is to review the Application filed by American Family and its request for a Class E Certificate of Public Convenience and Necessity;

WHEREAS, by Order No. 1999-654 dated September 15, 1999 (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less in order to show that the public convenience and necessity are not already being served in the requested service area;

WHEREAS, if the Commission grants the request of the Applicant, ORS will conduct a facility visit and inspect the vehicle(s) intended to be used to transport household goods prior to issuing the certificate;

WHEREAS, as a result of its review, ORS has determined a) American Family intends to operate as a Motor Vehicle Carrier of Household Goods between points and places in Charleston, Berkeley, and Dorchester Counties; b) American Family plans to lease sufficient vehicle(s) to provide the services applied for; c) American Family has agreed to provide services that meet service standards required by the Commission; d) the Company received a satisfactory safety rating from the South Carolina State Transport Police; e) American Family has certified that it currently has no outstanding judgments against it; f) American Family has certified that it is familiar with all statutes and regulations, including safety operations in South Carolina;

WHEREAS, in the event that the Commission grants American Family's Application, the Company will file with ORS the proper insurance, safety rating, and any other information required of it under South Carolina law;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions;

- 1) American Family certifies that the information contained in its Application is true and correct;
- 2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. ORS also agrees not to cross-examine the witness(es) offered by American Family;
- 3) American Family has obtained a safety rating of "satisfactory" from the South Carolina State Transport Police as required by 26 S.C. Code Ann. 103-133(a) (Supp. 2005);
- 4) American Family has no outstanding judgments pending against the Company;
- 5) American Family is familiar with all statutes, regulations, including safety operations in South Carolina governing for-hire motor carrier services, and agrees to operate in compliance with these statutes and regulations;
- 6) American Family will lease on a long-term basis necessary equipment to transport household goods commodities, as defined in 26 S.C. Code Ann. Reg. 103-210(1) (Supp. 2005), between points and places in Charleston, Berkeley, and Dorchester Counties;
- 7) American Family will obtain property and liability insurance that will meet the minimum requirements set by the Commission under 26 S.C. Code Ann. Reg. 103-172 (Supp. 2005);

8) American Family will join the South Carolina Tariff Bureau, Inc. ("Tariff Bureau") and agrees to abide by all the terms and conditions contained in the Tariff Bureau's tariff, which is on file with and approved by the Commission;

9) American Family has submitted a certificate of insurance for cargo which meets the minimum requirements set by the Commission under 26 S.C. Code Ann. Reg. 103-173 (Supp. 2005);

10) The Parties further agree that, subject to the satisfaction of Paragraphs 6, 7, and 8, the Company is fit, willing and able to appropriately transport household goods commodities between points and places in Charleston, Berkeley, and Dorchester Counties. Accordingly, the Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to transport household goods commodities, as defined in 26 Code Regs. 103-210(1), between points and places in Charleston, Berkeley, and Dorchester Counties in accordance with the provisions of S.C. Code Ann. § 58-23-10;

11) The Company agrees to file necessary financial information with the Commission and ORS for annual reporting and/or gross receipts reporting;

12) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) reads in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

13) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and to take no action inconsistent with its adoption by the Commission. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.


14) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair, or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty or obligation.

15) This Settlement Agreement shall be interpreted according to South Carolina law.

16) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

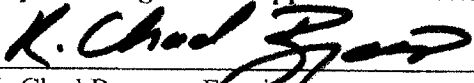
WE AGREE:

**Representing the Office of Regulatory Staff**

  
C. Lessie Hammonds, Esquire  
**Office of Regulatory Staff**  
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WE AGREE:

**Representing Mark Toppi d/b/a American Family Moving & Storage**

  
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